

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

The Board finds that OWCP failed to properly develop the underlying issue of what portion of appellant's SSA age-related retirement benefits were attributable to federal employment.

OWCP's procedures provide that an overpayment occurs when FECA compensation is not reduced by the FERS/FECA offset amount. Since the SSA will not report an offset amount until after SSA benefits are received, an overpayment will almost always occur and will need to be calculated for each period in which the offset amount was not withheld from compensation.<sup>3</sup> The offset provision of 5 U.S.C. § 8116(d)(2) and applicable regulations apply to SSA age-related retirement benefits that are attributable to federal service.<sup>4</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA age-related retirement benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>5</sup> In identifying the fact and amount of an overpayment of compensation following a claimant's receipt of age-related SSA retirement compensation, the Board has observed that OWCP uses a FERS Offset Calculation Worksheet.<sup>6</sup> This calculation worksheet is sent to SSA and the completed form is returned to OWCP setting forth purported SSA calculations as to the effective date and rate of SSA benefits without FERS and the effective date and rate of SSA benefits with FERS.<sup>7</sup> Following receipt of the purported SSA calculations, a preliminary determination of overpayment is issued if a prohibited dual benefit was received.<sup>8</sup>

The Board has observed, however, that not all federal employees are enrolled in FERS. Some FECA claimants are enrolled in another retirement program, such as the Civil Service Retirement System (CSRS). Other federal employees are not entitled to be enrolled in a federal retirement program. Therefore, OWCP's procedures with regard to FERS participants are not applicable to all recipients of FECA compensation and SSA age-related retirement benefits. Therefore, the information solicited on the FERS Offset Calculation Worksheet that OWCP sends to SSA is not applicable to non-FERS claimants and does not establish either the fact or amount of an overpayment.

Herein, the evidence of record establishes that appellant was not enrolled in a federal retirement program. On the reverse side of his traumatic injury claim (Form CA-1), the employing establishment reported that retirement coverage was not applicable to him. Furthermore, the Notification of Personnel Action (Form SF-50) of record notes appellant's retirement plan only as Federal Insurance Contributions Act. As OWCP has not established that he concurrently received SSA age-related retirement benefits, based in part on his federal service, and FECA disability compensation without appropriate offset, it has not established that he received an overpayment of

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Identifying and Calculating an Overpayment*, Chapter 6.200.1(h), (September 2018).

<sup>4</sup> See 5 U.S.C. § 8116(a), (d); 20 C.F.R. § 10.421(a).

<sup>5</sup> FECA Bulletin No. 97-09 (February 3, 1997).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Supra* note 2.

compensation in the amount of \$5,234.53 for the period October 1, 2007 to July 20, 2019. The Board therefore finds that the September 18, 2019 decision must be reversed.

**IT IS HEREBY ORDERED THAT** the September 18, 2019 decision of the Office of Workers' Compensation Programs is reversed.

Issued: December 2, 2020  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board